

## **1 VAC 55-20-320. Eligible employees.**

### A. State employees.

1. Full-time salaried, classified employees and faculty as defined in 1 VAC 55-20-20 are eligible for membership in the health benefits program. A full-time salaried employee is one who is scheduled to work at least 32 hours per week or carries a faculty teaching load considered to be full time at his institution.

2. Certain full-time employees in auxiliary enterprises (such as food services, bookstores, laundry services, etc.) at the University of Virginia, Virginia Military Institute and the College of William and Mary as well as other state institutions of higher learning are also considered state employees even though they do not receive a salaried state paycheck. The Athletic Department of Virginia Polytechnic Institute and State University is an example of a local auxiliary whose members are eligible for the program.

3. Certain full-time employees of the Medical College of Virginia Hospital Authority are eligible for the program as long as they are on the authority's payroll and were enrolled in the program on November 1, 1996. They may have payroll deductions for health benefits premiums even if they rotate to the Veterans' Administration Hospital or other acute care facility.

4. Other employees identified in the Code of Virginia as eligible for the program.

5. Classified positions include employees who are fully covered by the Virginia Personnel Act, employees excluded from the Virginia Personnel Act by

subdivision 16 of §2.2-2905 of the Code of Virginia, and employees on a restricted appointment. A restricted appointment is a classified appointment to a position that is funded at least 10% from gifts, grants, donations, or other sources that are not identifiable as continuing in nature. An employee on a restricted appointment must receive a state paycheck in order to be eligible.

B. Local employees.

1. Full-time employees of participating local employers are eligible to participate in the program. A full-time employee is one who meets the definition set forth by the local employer in the employer application.

2. Part-time employees of local employers may participate in the plan if the local employer elects and the election does not discriminate among part-time employees. In order for the local employer to cover part-time employees, the local employer must provide to the department a definition of what constitutes a part-time employee.

The department reserves the right to establish a separate plan for part-time employees.

C. Unavailability of employer-sponsored coverage.

1. Employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. The employers of such employees, officers, and teachers must apply for participation and certify that other employer-sponsored health care coverage is not available. The employers shall collect contributions from such individuals and timely remit

them to the department or its designee, act as a channel of communication with the covered employee and otherwise assist the department as may be necessary. The employer shall act as fiduciary with respect to such contributions and shall be responsible for any interest or other charges imposed by the department in accordance with these regulations.

2. Local employees living outside the service area of the plan offered by their local employer shall not be considered as local employees whose local employers do not offer a health benefits plan. For example, a local employee who lives in North Carolina and works in Virginia may live outside the service area of the HMO offered by his employer; however, he may not join the program individually.

3. Employer sponsorship of a health benefits plan will be broadly construed. For example, an employer will be deemed to sponsor health care coverage for purposes of this section and 1 VAC 55-20-260 if it utilizes § 125 of the Internal Revenue Code or any similar provision to allow employees, officers, or teachers to contribute their portion of the health care contribution on a pretax basis.

4. Individual employees and dependents who are eligible to join the program under the provisions of this subsection must meet all of the eligibility requirements pertaining to state employees except the identity of the employer.

#### D. Retirees.

1. Retirees are not eligible to enroll in the state retiree health benefits group outside of the opportunities provided in this section.

2. Retirees are eligible for membership in the state retiree group if a completed enrollment form is received within 31 days of separation for retirement. Retirees who remain in the health benefits group through a spouse's state employee membership may enroll in the retiree group at one of three later times: (i) future open enrollment, (ii) within 31 days of a qualifying mid-year event, or (iii) within 31 days of being removed from the active state employee spouse's membership.

3. Membership in the retiree group may be provided to an employee's spouse or dependents who were covered in the active employee group at the time of the employee's death in service

4. Retirees who have attained the age of 65 or are otherwise covered or eligible for Medicare may enroll in certain plans as determined by the department provided that they apply for such coverage within 31 days of their separation from active service for retirement. Medicare will be the primary payor and the program shall serve as a supplement to Medicare's coverage.

5. Retirees who are ineligible for Medicare must apply for coverage within 31 days of their separation from active service for retirement. In order to receive coverage, the individual must meet the retirement requirements of his employer and receive an immediate annuity.

6. Local employers may offer retiree coverage at their option.

#### E. Dependents.

1. The following family members may be covered if the employee elects:

a. The employee's spouse

The marriage must be recognized as legal in the Commonwealth of Virginia.

b. Children

Under the health benefits program, the following eligible children may be covered to the end of the year in which they turn age 23 regardless of student status (age requirement is waived for adult incapacitated children), if the child lives at home or is away at school, is not married and receives over one-half of his or her support from the employee.

(i) Natural and Adopted Children: In the case of natural or adopted children, living at home may mean living with the other parent if the employee is divorced.

Also, if the biological parents are divorced the support test is met if a natural or adopted child receives over one-half of their support from either parent or a combination of support from both parents. However, in order for the non-custodial parent to cover the child, the non-custodial parent must be entitled to claim the child as a dependent on his federal income tax return, or the custodial parent must sign a written declaration that he or she will not claim the child as a dependent on their federal income tax return.

(ii) Stepchildren: Unmarried stepchildren living with the employee in a parent-child relationship. However, stepchildren may not be covered as a dependent unless their principal place of residence is with the employee, and the child is a member of the employee's household. A stepchild must receive over one-half of his or her support from the employee.

(iii) Incapacitated Children: Adult children who are incapacitated due to a physical or mental health condition, as long as the child was covered by the plan and the incapacitation existed prior to the termination of coverage due to the child attaining the limiting age. The employee must make written application, along with proof of incapacitation, prior to the child reaching the limiting age. Such extension of coverage must be approved by the plan and is subject to periodic review. Should the plan find that the child no longer meets the criteria for coverage as an incapacitated child, the child's coverage will be terminated at the end of the month following notification from the plan to the enrollee.

Adult incapacitated children of new employees, provided that:

- The enrollment form is submitted within 31 days of hire;
- The child has been covered continuously by group employer coverage since the disability first occurred; and

- The disability commenced prior to the child attaining the limiting age of the plan.

The enrollment form must be accompanied by a letter from a physician explaining the nature of the incapacitation, date of onset and certifying that the dependent is not capable of self-support. This extension of coverage must be approved by the plan in which the employee is enrolled.

(iv) Other Children: A child in which a court has ordered the employee to assume sole permanent custody. The principal place of residence must be with the employee, and the child must a member of the employee's household.

Additionally, if the employee or spouse shares custody with the minor child who is the parent of the "other child", then the other child may be covered. The other child, the parent of the other child, and the spouse who has custody must be living in the same household as the employee.

When a child loses eligibility, coverage terminates at the end of the month in which the event that causes the loss of eligibility occurs.

There are certain categories of persons who may not be covered as dependents under the program. These include: dependent siblings, grandchildren, nieces, and nephews except where the criteria for "other children" are satisfied. Parents, grandparents, aunts and uncles are not eligible for coverage regardless of dependency status.

~~b. The employee's unmarried natural or legally adopted children;~~

~~c. Unmarried stepchildren living with the employee in a parent-child relationship and dependent on the employee for federal tax purposes;~~

~~d. Adult incapacitated children as long as the child was covered by the plan and the incapacitation existed prior to the termination of coverage due to the child attaining the limiting age;~~

~~e. Adult incapacitated children of new employees, provided that:~~

~~(1) The enrollment form is submitted within 31 days of hire;~~

~~(2) The child has been covered continuously by group employer coverage since the disability first occurred; and~~

~~(3) The disability commenced prior to the child attaining the limiting age of the plan.~~

~~The enrollment form must be accompanied by a letter from a physician explaining the nature of the incapacitation, date of onset and certifying that the dependent is not capable of self-support. This extension of coverage must be approved by the plan in which the employee is enrolled.~~

~~f. Other children on an exception basis. Generally, an exception will not be granted unless:~~

~~(1) A court orders the eligible employee to assume permanent custody of the child; and~~

~~(2) Both of the child's natural parents are deceased, missing, or incarcerated or a court order has found the parents incapable of caring for the child.~~

~~Local employers and state agencies do not have the authority to grant exceptions. If the circumstances appear to meet the criteria, the facts of the case must be sent in writing to the department for a determination. Minor children who are adopted, regardless of relationship to the employee, enjoy the same benefits as natural children. Natural or adopted children who are otherwise eligible for coverage may be covered by the employee whether or not they live with the employee.~~

~~Children of the spouse of an eligible employee may not be covered as a dependent in the health benefits program unless they live with the employee and meet the criteria for family membership, as given in previous paragraphs.~~

~~A child who is self-supporting for federal income tax purposes is ineligible to be covered under the employee's family membership. A child who is otherwise eligible to be covered by family membership may be covered until such time as he becomes self-supporting.~~

~~Coverage for a dependent child stops at the end of the month in which the child marries.~~

~~g. Special rules:~~

~~(1) There are certain categories of persons who may not be covered as dependents under the program. These include: dependent siblings, grandchildren, nieces, nephews, and most other children except where the criteria for "other children" are satisfied (see 1 VAC 55-20-320 E 1f). Parents, grandparents, aunts and uncles are not eligible for coverage regardless of dependency status.~~

~~(2) Under the health benefits program, eligible children may be covered to the end of the year in which they turn age 23 regardless of student status, if the child lives at home, is not married and is not self-supporting. In the case of natural or adopted children, living at home may mean living with the other parent if the employee is divorced. Also, a child who is away at school may be covered.~~

~~Children may be covered regardless of the age if incapable of self-support because of a severe physical or mental incapacitation, which was diagnosed while coverage was in force. An enrollment form for continued coverage for a disabled child is required within 31 days prior to the child's age attainment (above) to maintain coverage (see 1 VAC 55-20-330).~~